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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Minimum humanitarian standards

Report of the Secretary-General

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Introduction

1. In its resolution 1996/26 of 19 April 1996, entitled "Minimum humanitarian standards", the Commission on Human Rights invited all States to consider reviewing their national legislation relevant to situations of public emergency with a view to ensuring that it meets the requirements of the rule of law and that it does not involve discrimination on the ground of race, colour, sex, language, religion or social origin (para. 3).

2. In paragraph 5, the Commission requested the Secretary-General to transmit the text of the resolution to Governments and intergovernmental and non-governmental organizations for their comments on this matter for submission to the Commission on Human Rights at its fifty-third session.

3. Pursuant to this request, the Secretary-General, on 16 August 1996, addressed requests to Governments and competent intergovernmental and non-governmental organizations for their comments on Commission resolution 1996/26.

4. By 6 December 1996, comments had been received from the following States: Argentina, Belize, Croatia, Cuba, Lebanon, Mauritius, Norway (on behalf of the five Nordic countries and South Africa), Philippines, Saudi Arabia, Ukraine. The Government of Uruguay referred to its comments on this matter submitted earlier pursuant to Commission resolution 1995/29 (E/CN.4/1996/80).

5. Comments were also received from the International Labour Organization and the Arab Labour Organization. The Food and Agriculture Organization of the United Nations and the United Nations Educational, Scientific and Cultural Organization indicated that they had no comments to submit.

6. The following non-governmental organizations replied: Commission for the Defense of Human Rights in Latin America, Friends World Committee for Consultation (Quakers), International Human Rights Association of American Minorities.

7. The present report contains a summary of the substantive replies received. It also includes information submitted by the Governments of Cuba, Estonia and Portugal pursuant to Commission on Human Rights resolution 1995/29, received after the preparation of documents E/CN.4/1996/80 and Add.1-3.

8. Any additional replies will be reproduced in an addendum to this document.

I. COMMENTS RECEIVED FROM STATES

Argentina

[Original: Spanish]
[25 November 1996]

1. The four Geneva Conventions (1949) were ratified by Argentina on 18 September 1956 and accession to the two Additional Protocols (1977) took place on 26 November 1986. The Additional Protocols establish an obligation for the State to adopt national measures to guarantee their full implementation, even in time of peace. In July 1996, Argentina also accepted the competence of the International Fact-Finding Commission in accordance with article 90 of Additional Protocol I to the Geneva Conventions.

2. With a view to the achievement of such an objective, the Argentine Council for International Relations and the International Committee of the Red Cross organized the first Argentine seminar in 1992 to consider the national measures to be adopted to ensure the enforcement of international humanitarian law. During the seminar, in which important persons involved in related topics took part, work was carried out on various specific items.

3. Under Decree No. 933/94 of 16 June 1994, the National Executive set up the Interministerial Commission on the Enforcement of International Humanitarian Law, which is composed of officials of the Ministries of the Interior, Justice and Defence and the Ministry of Foreign Affairs, International Trade and Worship. The functions assigned by the Decree to the Commission relate to the implementation and enforcement of international humanitarian law on the basis of proposals submitted to the national authorities on legislative and regulatory provisions and measures to guarantee the implementation of the basic international instruments in this regard.

4. As to the wording of the resolution under consideration, it is important to draw attention to its authors' awareness of the exclusion from the scope of Protocol II of "situations of internal disturbances and tensions", as not being armed conflicts. The idea is thus to fill a legal gap, initially by means of a set of principles, which will later become a declaration and, when international consensus so permits, legal rules establishing obligations for States by means of an international treaty.

5. The implementation of the minimum standards of international humanitarian law within Argentina's borders is difficult to imagine in view of the absence of national or international conflicts that would bring them into force in their purest form. None the less, Argentina's commitment in this regard is reflected in the studies it is conducting to adopt peacetime measures to prevent situations of this kind, in its accession to the international instruments in force and in its participation in international bodies dealing with the question.

Belize

[Original: English]
[8 October 1996]

1. Belize does not have any public emergency legislation. The normal practice in Belize in the event of public emergencies has been for the Governor General to declare, by way of a proclamation published in the Government Gazette, that a state of public emergency exists. He is given this power under section 18 and 19 of the Belize Constitution.

2. The proclamation declaring the public emergency will subsist only during the existence of the situation leading to the declartion and will lapse immediately thereafter.

3. Since Independence in 1981, there has never been a declaration of a state of public emergency in Belize. However, should such a need arise, we are confident that the Governor General, in making the necessary proclamation, will bear in mind resolution 1996/26.

Croatia

[Original: English]
[19 November 1996]

1. The Constitution of the Republic of Croatia pays special attention to the protection of human rights and fundamental freedoms by devoting its whole chapter 3 entitled "Fundamental Human Rights and Freedoms" to the elaboration of different human rights standards including both civil and political rights and economic, social and cultural rights, mainly following the standards elaborated in major international human rights instruments. Moreover, the Constitution expressly sets the non-discrimination clause and stipulates the equality before the law (art. 14).

2. Such constitutionally guaranteed human rights and freedoms could be restricted solely by law in order to protect the freedoms and rights of others and for the protection of public order, morality and public health (art. 16).

3. In accordance with article 17 of the Constitution further restrictions on the enjoyment of constitutionally guaranteed human rights and freedoms are possible during the state of war or an immediate threat to the independence and unity of the Republic of Croatia, as well as in the event of some natural disaster. However, such restrictions are possible solely on the basis of the decision of the Croatian Parliament adopted by a two-thirds majority of all representatives or, if the Parliament is unable to meet, by the President of the Republic. The extent of such restrictions has to be appropriate to the nature of the danger and may not result in the inequality of citizens in respect of race, colour, sex, language, religion, national or social origin. Even if the conditions for the restrictions of constitutional rights and freedoms are fully met such restriction could not be imposed on the application of the constitutional provisions concerning the right to life, prohibition of torture, inhuman or degrading treatment or punishment, the principle nullum crimen nulla poena sine lege and the freedom of thought,

conscience and religion, thus declaring these rights and freedoms non-derogable. At present, there are no such limitations or restrictions in force in the Republic of Croatia.

4. Some further limitations on certain human rights and freedoms could be set upon in accordance with the provisions of the Law on the Internal Affairs, which entitles the Minister of the Interior to make a decision on the measures concerning individuals or legal entities that can possibly result in the interference with the freedom and secrecy of correspondence and all other forms of communication. However, such measures could be applied solely for the protection of the security of the State, and they should be immediately notified to the President of the Republic.

5. Furthermore, in accordance with the aforementioned Law the Minister of the Interior is entitled, in the cases of public emergency declared by the Parliament or the President of the Republic, to limit the freedom of movement of certain individuals by his decision, or to subject them to the obligation of reporting their whereabouts to the competent police authority. Such decision is subject to review by the Supreme Court of the Republic of Croatia which is obligated to make the decision within 48 hours. No such restrictions are currently being applied in the Republic of Croatia.

Cuba

[Original: Spanish]
[1 March 1996]

1. The many situations of conflict in which violence causes human suffering and breaches of the principles and standards that protect human beings are indeed matters of concern in the modern-day world. Efforts to prevent such unwanted situations are therefore important.

2. The study of the resolution and the Declaration of Minimum Humanitarian Standards has to continue by means of a detailed analysis designed to achieve the proposed objectives. The measures under consideration must, in any event, be based on the principles embodied in the Charter of the United Nations, particularly those relating to sovereign equality and non-interference in the internal affairs of States, which are particularly relevant.

3. To this end, the material scope of the provisions of international humanitarian law and of human rights themselves has to be properly monitored to prevent the superposition of concepts and notions which might lead to the formulation of policies contrary to the content of the above-mentioned principles.

4. Concepts such as that of "public emergency", which is subject to widely varying interpretations, therefore have to be properly defined.

5. With regard to paragraph 3 of the resolution under consideration, the Government of Cuba is making enormous efforts to guarantee fundamental human rights and, in particular, the right to life and integrity of the individual,

as shown by the country's legislation, especially its main law, which leaves no room for doubt about its policy of non-discrimination on the grounds of race, colour, sex, language, religion or social origin.

6. The Government of Cuba takes this opportunity to reaffirm its willingness to continue working together with the international community to support initiatives by the United Nations that will lead to the creation of conditions in all parts of the world for the maintenance of international peace and security, to the establishment of friendly relations based on respect for the principles of the equality of rights and self-determination of peoples and to international cooperation in solving the problems being faced.

7. The Government of Cuba considers that the Declaration of Minimum Humanitarian Standards adopted by the expert meeting in Turku/Åbo, Finland, in 1990 uses concepts such as internal violence, disturbances, tensions and public emergency, which are not clearly defined from the legal point of view and on which there is still no consensus about a standard.

8. Respect for the principles of international law, such as non-interference in internal affairs, sovereign equality, the independence and sovereignty of States and the right to self-determination of peoples, is as important as the adoption of minimum humanitarian standards in avoiding human suffering in such circumstances.

9. In the opinion of the Government of Cuba, it is just as important, in order to prevent such internal conflicts and the human rights violations that often go with them, to implement the provisions of the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993, particularly the provision stating that all human rights, including the right to development, are universal, indivisible and interdependent.

10. Cuba considers that the unfair and unequal international political and economic order, underdevelopment, the unequal distribution of income among countries and within countries and, in some cases, the actions of other States and the implementation of measures of coercion are also responsible for the outbreak and continuation of internal conflicts and the suffering they cause.

11. It cannot be overlooked that general international law, international humanitarian law and human rights standards in all their richness offer a basis for the protection of human rights in every situation.

12. With regard to the 1990 Declaration of Minimum Humanitarian Standards, the declaration of a state of emergency in Cuba is governed by the Constitution and the National Defence Act.

13. According to the Constitution, the President of the Council of State may declare a state of emergency in all or part of the national territory, in the event of the threat of natural disasters, catastrophes and other circumstances which affect internal order, the security of the country or the stability of the Government.

14. The 1994 National Defence Act clearly states that exceptional situations may temporarily occur in all or part of the national territory and that a

state of emergency is declared by means of a decision which states the reasons for it, the part of the territory to which it applies and the period of time during which it will be in force.

15. In Cuba, freedoms and fundamental political, economic, social and cultural rights are established by the Constitution, as is equality of rights, and they are all provided for in the main legal texts in force.

16. The Cuban Constitution prohibits discrimination based on race, skin colour, sex, national origin, religious belief or any other ground contrary to human dignity and makes such discrimination punishable by law.

17. Cuban law provides that, in emergency situations, the National Defence Council may adopt regulations based on the circumstances and intended for the territory where such situations exist to govern the exercise of the right to work, the right to freedom of speech, freedom of the press and freedom of assembly and association and the right to the inviolability of the home and correspondence, as well as the system of detention. Measures adopted during emergency situations are no longer in force once such situations have been declared to have ended and, when it is considered necessary that they should continue to be in force, they have to be approved by the National Peoples' Assembly or by the Council of State of the Republic of Cuba.

18. The solution to problems such as the violation of human rights in internal conflicts does not always lie in the adoption of new standards, particularly when the existing ones have not been fully applied. What is required is thus a more careful and detailed study by experts from all parties who will clearly identify the gaps which may exist in international law in the event of internal conflicts and reach a broad international consensus on how to deal with this problem. Any standard that is adopted must also take account of respect for the sovereignty of States.

Estonia

[Original: English]
[12 February 1996]

1. The Government of Estonia notes that the purpose of the Turku Declaration which combines elements of both humanitarian law and human rights law is to list the most basic standards that should be applicable in all situations, during peacetime as well as wartime. These standards should be respected by, and applied to all persons, groups and authorities.

2. At the same time, the Minimum Standards should not be interpreted as restricting or impairing the provisions of any existing international humanitarian instrument or human rights instrument. The existing human rights instruments and humanitarian instruments are and should remain the standards that must be met in all but exceptional circumstances.

3. Nevertheless, given the variety of situations, the number of which is increasing in the world where the provisions of the existing instruments are temporarily suspended, the need for a core document listing minimum humanitarian standards is evident. Estonia welcomes the ideas expressed in

the Turku Declaration and considers them appropriate to be taken as a basis for a further elaboration by the Commission on Human Rights, in order to draft a United Nations Declaration on Minimum Humanitarian Standards.

4. The Estonian Government is pleased to inform the Secretary-General that a new Law on the Situations of Public Emergency was adopted by Riigikogu (Parliament) and signed by the President of the Republic on 29 January 1996. It shall enter into force on 16 February 1996. The Law specifies the situations during which the state of emergency may be proclaimed, which rights can be restricted, and what obligations can be imposed upon people.

Lebanon

[Original: Arabic]
[15 November 1996]

1. The Ministry of Justice of Lebanon indicated that it had studied the recommendations contained in Commission resolution 1996/26 concerning minimum humanitarian standards in emergency situations, and was in agreement therewith. Its only comment concerned the wording of the first paragraph of the recommendations, which should read as follows:

> "1. Considers that the principles applicable in situations of violence and disturbance of all kinds, in any country, should be consistent with the Charter of the United Nations and the fundamental principles of international law."

This is because the Charter of the United Nations embodies the fundamental principles on which the international community is based and, in the event of their failure to cover a particular situation, the general principles of international law would apply since they are universally recognized principles regardless of whether they are embodied in international instruments or treaties or unrecorded in writing.

2. It should be noted that the Emergency Act in Lebanon is consistent with the principles of the International Bill of Human Rights and does not discriminate between citizens.

Mauritius

[Original: English]
[17 October 1996]

1. Section 18 of the Constitution of the Republic of Mauritius provides for derogations from fundamental rights and freedoms under emergency powers.

2. Subsection (i) of section 18 suspends the operation of sections 5 and 16 for anything contained in or done under the authority of a law during the period of emergency. However, the measures taken under the authority of a law during that period must be reasonably justifiable for dealing with the situation.

3. Besides, there shall be in force a Proclamation of the President declaring that the measures authorized by the law (to the extent that it would be inconsistent with or in contravention of section 5 or section 16 if taken otherwise than during a period of public emergency) are required in the interest of peace, order and good government.

4. Any persons detained under the authority of law (as mentioned in paragraph 2 above) shall be informed in a language he understands the grounds upon which he is detained. His detention shall be reviewed by an independent and impartial tribunal where he is permitted to appear in person or by a legal representative of his own choice. The detainee is entitled to be represented by a legal representative of his own choice and is permitted to make representations to the Tribunal.

5. Copies of sections 5, 16 and 18 of the Constitution are attached.*

Norway

(on behalf of the five Nordic countries and South Africa)

[Original: English]
[21 November 1996]

1. The Governments of Denmark, Iceland, Finland, Norway, Sweden and South Africa welcome resolution 1996/26, entitled "Minimum humanitarian standards", adopted by the Commission on Human Rights on 19 April 1996, and the opportunity to present comments on this matter for submission to the Commission on Human Rights at its fifty-third session.

2. The Nordic countries and South Africa are gravely concerned at the large number of situations where internal violence causes extensive suffering and breaches of the principles of humanity and undermines the protection of human rights. They recognize the need to address principles applicable to situations of internal violence and disturbance of all kinds in a manner consistent with international law and the Charter of the United Nations.

3. It will be recalled that the Commission on Human Rights in the above-mentioned resolution, welcomed the offer by Denmark, Finland, Iceland, Norway and Sweden to organize, in cooperation with the International Committee of the Red Cross, a workshop to which governmental and non-governmental experts from all regions would be invited to consider this issue and to make the outcome of the workshop available for dissemination to Governments and intergovernmental and non-governmental organizations.

4. The Government of South Africa hosted a workshop in Cape Town from 27 to 29 September 1996 in order to address minimum humanitarian standards applicable in all situations. The workshop was organized by the Governments

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* Available for consultation in the files of the Secretariat.

of the five Nordic countries and South Africa in close cooperation with the International Committee of the Red Cross. Representatives of 29 Governments from all regions of the world attended the workshop, together with representatives of a number of United Nations bodies, international, intergovernmental and non-governmental organizations.

5. The full report of the Cape Town workshop is foreseen to be distributed as a document of the fifty-third session of the Commission on Human Rights. The outcome of the workshop, which was approved by the participants, reads as follows:

> "1. The United Nations Commission on Human Rights should request the United Nations Secretary-General to undertake, in coordination with the International Committee of the Red Cross (ICRC), an analytical study of the issues addressed at the Cape Town Workshop on Minimum Humanitarian Standards. Governments, treaty bodies, international organizations, particularly the UNHCR, as well as all regional organizations and non-governmental organizations should be invited to contribute to the study as appropriate.
>
> "2. The analytical study should be guided by the urgent need to protect those who are exposed to extreme suffering resulting from the lack of sufficient protection. The study should, in the light of the prevailing experience during recent years, look into all the issues discussed at the Cape Town Workshop, also from the perspective of the various actors, assess the need for a United Nations document setting out and promoting minimum humanitarian standards or standards of humanity applicable in all circumstances and consider the options for making use of the study within the United Nations system including, for example, at an open-ended United Nations seminar under the aegis of the United Nations Commission on Human Rights.
>
> "3. The Cape Town Workshop encourages governments, international and regional organizations as well as non-governmental organizations and civil society to promote a debate on the need for and use of minimum humanitarian standards or standards of humanity applicable in all circumstances as well as on practical measures aimed at the improvement of the situation of those affected."

Philippines

[Original: English]
[15 November 1996]

There are two bills relevant to situations of national emergencies in the Philippines which have been filed during the current Tenth Congress of the Philippines of the House of Representatives, namely:

(a) Unnumbered Substitute Bill to consolidate House Bill Nos. 1052, 4597, 4872, 5011, 6336 and 6804 - "An Act Streamlining and Strengthening the Philippine Disaster Preparedness and Prevention Capability, Appropriating Funds Therefor and for Other Purposes";

(b) House Bill No. 5820 - "An Act Placing Half of the Manpower and Transport Resources of the Armed Forces of the Philippines at the Automatic Disposal of Relief Agencies of the Government for Massive Rescue Missions During Emergencies and Natural Calamities".

The texts of the two bill were enclosed.*

Portugal

[Original: French]
[1 March 1996]

1. Portugal recognizes the importance of and endorses the principles embodied in the Declaration on Minimum Humanitarian Standards, adopted in 1990 in Turku/Åbo (Finland). With regard to the abolition of the death penalty, which is referred to in article 8, Portugal abolished this penalty over a century ago and, in 1990, ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

2. In the past few years, Portugal has submitted detailed information to the Commission on Human Rights on the national legal framework for the declaration of states of emergency and its impact on the enjoyment of human rights. This legal framework takes account of the applicable international instruments and, in particular, of article 4 of the International Covenant on Civil and Political Rights, which Portugal has ratified.

3. With regard to article 10 of the Declaration, Portugal considers that children aged under 18 years should not take part in hostilities either directly or indirectly, including through enlistment in the armed forces or armed groups. Portugal therefore supports the work being done by the Commission on Human Rights for the adoption of an optional protocol to the Convention on the Rights of the Child, in accordance with the proposal made by the Committee on the Rights of the Child. In this particular context and others covered by the Declaration, particularly articles 12 to 17, Portugal recognizes the key importance which will be played by the study being carried out by Mrs. Graça Machel, the expert appointed by the Secretary-General, on the impact of armed conflict on the enjoyment of the fundamental rights of children.

Saudi Arabia

[Original: Arabic]
[14 November 1996]

1. The Government of the Kingdom of Saudi Arabia wishes to point out that its legal system does not involve any of the types of discrimination referred to in Commission resolution 1996/26, since the legal system in the Kingdom of Saudi Arabia is based on the principles and provisions of the Islamic Shari'a derived from the Holy Qur'an in which Almighty God says "People! We have created you from a male and a female and divided you into nations and tribes so that you might have knowledge of each other. The noblest of you in the sight of God is he who fears Him most" (verse 13 of the chapter entitled "The Chambers").

2. In this context, article 8 of the Basic Law of Government of the Kingdom of Saudi Arabia stipulates that government therein is based on justice, consultation and equality in accordance with the Islamic Shari'a. Articles 26 and 27 of that Basic Law further stipulate that the State shall protect human rights in accordance with the Islamic Shari'a and shall safeguard the rights of citizens and their families in situations of emergency and in the event of illness, disability or old age.

Ukraine

[Original: Russian]
[9 October 1996]

1. Ukraine attaches particular significance to bringing its legislation into line with existing international standards governing relations between the State and the individual. In that connection, the Constitution of the Ukraine adopted on 28 June 1996 underlines the priority status of the interests and rights of the individual.

2. As far as Ukraine is concerned, the problem of national minorities and their integration in society is of paramount importance for the country's future development and for maintaining stability and a crises-free situation in its political arena, as was hitherto the case - a noteworthy exception in the Western European region.

3. In the light of the foregoing, Ukraine considers as timely and topical the proposal contained in paragraph 3 of the Commission on Human Rights resolution 1996/26 entitled "Minimum humanitarian standards" for considering the possibility of reviewing national legislation relevant to situations of public emergency with a view to ensuring that it meets the requirements of the rule of law and does not involve discrimination on the grounds of race, colour, sex, language, religion or social origin.

4. Bearing in mind the recommendations contained in the aforementioned resolution, the Ukraine indicates its willingness to make every effort along those lines by formulating new draft laws and evaluating and making optimum use of provisions in Ukraine's existing legislation. In particular, the recommendations of resolution 1996/26 will be taken into account in the law on the indigenous people of the Crimea, on which work is now getting under way and which should play a decisive role in harmonizing inter-ethnic relations in our State.

II. COMMENTS SUBMITTED BY SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

International Labour Organization

[Original: English]
[9 September 1996]

1. The ILO shares the concern of the United Nations at the growing number of situations in which intolerance and discrimination contribute to tension leading to civil disturbance and violence, and even to civil war. For this reason, the ILO has been working with a large number of countries to help them adapt their law and practice to the requirements of ILO standards on this question, and in particular the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). This instrument has been ratified by 120 countries, and is the subject of ILO technical advice and assistance in other countries as well.

2. In this respect, it is important to look beyond the legislation concerning discrimination and take account also of regulations, collective agreements, arbitration awards and, of course, of practice. This may be important in particular where a country has adopted satisfactory legislation prohibiting discrimination, but has not created mechanisms to provide relief from it. ILO standards and its supervisory machinery pay close attention to how the principles laid down by the International Labour Conference are applied in practice, and this often forms the basis of technical advice and assistance under the technical cooperation programme. It is thus to be hoped that the workshop to be organized will take account of practice as well as legislation.

3. As mentioned above, the ILO's work in this area is based on its standards. Convention No. 111 prohibits discrimination on slightly different grounds from those contained in resolution 1996/26: "race, colour, sex, religion, political opinion, national extraction or social origin" (art. 1 (1)(a)). These points appear to the ILO to be important in preventing social tension leading to civil disturbances; and it may be remarked that they correspond also to the requirements of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights more closely than does the list in the resolution. Here again, we hope that further deliberations on this point will take account of these wider factors.

4. Finally, if the ILO were to compile a list of fundamental human rights designed to prevent this kind of conflict, it would look beyond the question of discrimination, important as that subject is. Certainly it would be vital, at a minimum, to consider freedom of association and the existence of forced labour, as well as discrimination. We have also found, by recent experience in certain countries and in cooperation with the United Nations, that the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169), which builds on the precepts of Convention No. 111, has proven to be a useful tool in resolving inter-ethnic conflicts of long standing.

Arab Labour Organization

[Original: Arabic]
[7 November 1996]

The Arab Labour Organization wishes to propose the following amendments to the text of Commission on Human Rights resolution 1996/26 entitled "Minimum humanitarian standards":

1. Reference should be made to the Universal Declaration of Human Rights of 10 December 1948 and the provisions of the International Covenant on Economic, Social and Cultural Rights, adopted by the General Assembly of the United Nations on 16 December 1966, which have greatly influenced the principles of international law, as well as constitutions and positive laws.

2. The text of the resolution should refer to the need to safeguard the right to self-determination, which constitutes the starting point for any guarantee of international protection for human rights through which situations of internal violence and disturbance of all kinds could be curbed.

3. Provision should be made to safeguard intellectual and political freedoms, since greater scope for freedom of opinion, freedom of expression, freedom of the press, freedom of assembly and freedom of conscience and belief, through which all parties could express their opinions and beliefs in a democratic manner, would help to curb situations of internal violence.

4. Legal protection should be provided for rights and freedoms, since the judiciary is the basic citadel for the protection of rights and freedoms in general and constitutes a safety valve for society. Consequently, a legal guarantee should be provided in a manner consistent with the principle of equality between the parties in all fields.

5. Reference should be made to the various natural rights inherent in the human person, which are indispensable for human dignity and the free development of the human personality. Every human being should have a guaranteed right to live in freedom in a free society and to be treated with dignity, as a human person, regardless of his status, situation and circumstances. The most important of these rights is the right to security, prohibition of the infliction of physical or mental harm on an accused person, the right to health care, guaranteed educational opportunities in order to obtain a certain degree of culture, application of the principle of equality among individuals in all fields, freedom of movement, inviolability of the home, freedom and confidentiality of correspondence, protection of property rights, the right of every man, woman and child to freedom from malnutrition and hunger, protection of the rights of the family, which constitutes the foundation of society, and due regard for the rights of women and children.

6. In addition to recognition of these rights and freedoms, an appropriate environment should be created for their exercise, since the main purpose of such recognition is to ensure the effective exercise and practical realization of these rights, which are inherent in the human person.

III. COMMENTS SUBMITTED BY NON-GOVERNMENTAL ORGANIZATIONS

Commission for the Defense of Human Rights in Central America

[Original: Spanish]
[5 November 1996]

1. The serious concern of the United Nations Commission on Human Rights that the large number of situations of internal violence are the result of violations of fundamental human rights, the intensification of suffering, the breach of the fundamental principles of humanity underlying the protection of human rights and the non-identification of measures to prevent violations has been the cornerstone and basis of our organization's work ever since its establishment 18 years ago and it has motivated us to fight for the defence and promotion of the basic rights of each and every human being and to teach and disseminate mechanisms of international protection and defence with a view to improving the quality of life of all Central Americans.

2. As a result of this concern, we conducted research on the applicability of international human rights legislation in the domestic legislation of each of the countries of the Central American region. We therefore organized national workshops and two regional workshops to discuss internal problems, to collect input from the persons directly concerned, including those responsible for violations and the victims and those in charge of the administration of justice and those to whom it is administered, to publicize the progress of the research and to make the final results known.

3. We therefore welcome the proposal by Denmark, Finland, Ireland, Norway, Sweden and the International Committee of the Red Cross that a workshop should be organized to which governmental and non-governmental experts from all regions of the world will be invited to consider this issue and make proposals for solutions and the dissemination of information on the machinery discussed and proposed. We support the proposal that this concern should be brought to the attention of the Commission on Human Rights at its next session.

4. If the proposal is taken into consideration, we request you to let us know the outcome and to invite us to take part in the workshop so that we may share the results of our research and experience.

Friends World Committee for Consultation (Quakers)

[Original: English]
[28 October 1996]

1. Friends World Committee for Consultation (FWCC) shares the concern expressed in resolution 1996/26. There is no doubt that in the world today there are grave violations of human rights: in armed conflict, in situations of internal disturbance and in peacetime.

2. However, we are not convinced that the concept of "minimum humanitarian standards" is appropriate. An official document setting minimum standards always creates the danger that:

(a) These will in practice be considered as the norm/maximum (even if the text contains a disclaimer);

(b) If created by means of negotiation, the standards set will be below existing minimum obligations;

(c) It will inhibit further development of the law;

(d) The standards will not in fact be minimum standards and thus be liable to debate or controversy, thereby eroding the value of the document and making its application less likely.

3. Many standards already exist under both human rights and international humanitarian law. Nothing should be done which might undermine the existing provisions. Indeed, the first step should be to seek ways in which to improve the implementation of existing standards. These steps should include:

(a) Urging universal ratification of international and regional human rights treaties and, where they exist, the acceptance of individual and inter-State complaints procedures;

(b) Urging universal ratification of the 1949 Geneva Conventions and 1977 Additional Protocols, and the acceptance of the competence of the international fact-finding commission under article 90 of Additional Protocol I.

4. However, in most situations of non-international armed conflict, Additional Protocol II is not applied. This may be because the State is not a party to it or because the high threshold for application of the Protocol has not been reached. In addition, Governments are usually reluctant to admit that they are involved in a non-international armed conflict, even to the extent of agreeing that common article 3 of the Geneva Conventions applies to the situation. Some of these problems could be addressed by a statement of customary international humanitarian law applicable in all armed conflicts or in all internal armed conflicts, which would, therefore, apply to all parties to the conflict. We therefore welcome the study of customary international humanitarian law being undertaken by the International Committee of the Red Cross and encourage continuation of this work.

5. A particular weakness of the international protection system is during times of national emergency threatening the life of the nation when States are permitted to derogate from some of their obligations under international human rights law. Too often such national emergencies are in fact non-international armed conflicts but the Government is not prepared to admit that it is involved in an armed conflict. By so doing, it exposes its own population to increased risks by lowering the protection provided under international human rights law while refusing to extend the protection available under international humanitarian law, in particular the applicability of international humanitarian law to all parties to the conflict. Such behaviour is unacceptable. There is a need for a direct linkage between these two branches of international law. Thus, if a Government declared a state of emergency, it should be precluded from denying the applicability of at least common article 3 of the 1949 Geneva Conventions.

6. In addition, there is a need to enhance the international supervision of states of emergency and the protection of human rights during them. One possibility is that when a state of emergency is declared the responsible regional and/or international body should immediately send a representative to the country concerned to establish contact with the Government and assess the situation. Thereafter, monitors should be posted in the country for the duration of the state of emergency.

7. A particular problem arises in those situations where States are not parties to human rights treaties or there are many different actors but no, or no effective, Government. Even if the (previous) Government was a party to human rights treaties, these obligations may not be accepted by others. In such circumstances, the existence of a statement of "fundamental human rights" standards binding on all Governments and others as customary international law could be a useful basic document.

8. We welcome the workshop, mandated by paragraph 4 of resolution 1996/26, which took place in Cape Town from 27 to 29 September. The Quaker United Nations Office, Geneva, prepared a paper for this workshop and participated in it. We hope that the useful exchange of views which took place will lead to positive steps to address some of the current problems.

International Human Rights Association of American Minorities

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[7 November 1996]

1. Our observations address the issue of non-discrimination on the grounds of race, colour, language or religion in situations of internal violence and disturbance of all kinds.

2. IHRAAM recognizes non-discrimination as a well-established international legal principle, firmly embedded in the International Bill of Human Rights, and confirmed in most if not all international treaties thereafter. It marks a major ethical advance by the world community, and its utility in ensuring peaceful and equitable relations among individuals and groups is unquestionable.

3. It is now widely recognized that in today's world, most conflict situations involving violence, and leading to states of public emergency, are taking place within rather than between States. While some public emergency situations derive from class strife, conflict situations most frequently occur in multinational States between the dominant nationality and other less dominant nationalities (national minorities). Such conflicts are likely to occur particularly where there are exacerbated inequalities in socio-economic well-being, most often resulting from the non-dominant group's perception of itself as victimized by dominant group discrimination, and denied an equitable participation in national affairs or portion of the national wealth. In such instances, the group identity factor is of major pertinence in the conflict. Unfolding events entail, on the one hand, civil disobedience/unrest/violence/ riots/uprisings, etc. among the non-dominant group and, on the other, the use of State machinery, as controlled by the dominant group, to bring about a return to public order.

4. The above indicates several paradoxes in the relation of non-discrimination to the situation of internal strife/public emergency:

(a) The public emergency may be due to already existing situations of group discrimination;

(b) In so far as internal violence may be centred around a particular group or groups, the application of non-discrimination tends to obscure the true nature of the conflict, and thereby deflects a search for its root causes and appropriate solutions;

(c) In any event, in so far as many States anticipate internal violence to derive from group-related situations, this introduces an almost unavoidable element of hypocrisy to non-discrimination legislation as applied in regard to such situations.

5. IHRAAM further observers that the pervasive emphasis on non-discrimination, particularly in the Americas, itself tends to project a notion that everyone has (and should only have) the same rights. This in turn feeds the popular notion of reverse discrimination, a notion which has been repeatedly rejected internationally (International Convention on the Elimination of All Forms of Racial Discrimination (art. 1 (4)); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (art. 8 (3))), but appears to remain a valid point of argument within majoritarian multinational States.

6. It would be lamentable if the concept of non-discrimination - the intent of which was to allow all people full enjoyment of all human rights, irrespective of ethnicity (etc.) - were to serve rather than to obscure the true causes of inequalities (group discrimination) and thereby prevent their amelioration (through minority rights). Such may be the intent of dominant majorities in powerful States who, in a pluralist (minority rights) context, might have to share power. In the United States for instance, it is widely expressed within dominant majority opinion (and confirmed by Supreme Court decision) that group preferences (affirmative action) should be eliminated in so far as this is discriminatory. This conviction is now coupled with the sentiment, expressed by a number of "think-tanks", that the needs of those concerned (American national minorities) might better be dealt with under socio-economic categories. In other words, American national minorities deprived of affirmative action could still get their benefits as socio-economically deprived individuals. However, their disproportionate deprivation as a group would no longer be able to be conceptualized, let alone addressed.

7. IHRAAM therefore encourages the Commission on Human Rights, through its Working Group on Minorities and whatever other means possible, to further promote minority rights, the necessary policy corollary of non-discrimination in situations which concern national or ethnic, religious or linguistic minorities. Proactive recognition of the need for special measures and special rights to address minority needs which specifically arise from their being a minority in a multinational State may well serve to prevent or dispel internal violence. This is particularly the case as it concerns formerly

enslaved national minorities such as the African-Americans, Afro-Brazilians, Dalits, etc. who suffer acute and persistent inequalities due to centuries of gross violation of their human rights through official State policies of enslavement, segregation, and attempted forced assimilation into the bottom levels or "underclass" of the dominant majority.

8. Correspondingly, if these needs are not addressed, then internal violence will almost inevitably arise in response to prolonged situations of domination and inequality, and national legislation imposing non-discrimination in situations of public emergency, however unimpeachable, will be of little avail.